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No. 00-254

Supreme Court, U.S.
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In The

Supreme Court of the United States

DON SUNDQUIST, Governor of Tennessee, *et al.*,

Petitioners,

v.

RURAL WEST TENNESSEE AFRICAN-AMERICAN AFFAIRS COUNCIL, INC., *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF LANGSDON RESPONDENTS IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner's Statement of Parties to the Proceeding is correct except that David Shirley, listed as one of the Langsdon respondents, is not a party. Mr. Shirley attempted to intervene in the case at an earlier point in the litigation, but his motion to intervene was denied.

TABLE OF CONTENTS

Page

PARTIES TO THE PROCEEDING i

REASONS FOR DENYING THE WRIT 1

STATEMENT OF THE CASE 2

ARGUMENT 5

I. This case will be moot after November 7, 2000 ... 5

II. The decisions below regarding the relevant geopolitical area are consistent with this Court's previous opinions 6

CONCLUSION 9

TABLE OF AUTHORITIES

Page

CASES

Baker v. Carr, 222 F. Supp. 684 (M.D. Tenn. 1963) 2

Johnson v. DeGrandy, 512 U.S. 997 (1994) 3, 8

Kopald v. Carr, 343 F. Supp. 51 (M.D. Tenn. 1972) 2

Langsdon v. Millsaps, 436 F. Supp. 447 (W.D. Tenn. 1993), *aff'd*, 510 U.S. 160 (1994) 2

Shaw v. Hunt, 517 U.S. 899 (1996) 8

State ex rel. Lockert v. Crowell, 631 S.W.2d 702 (1982) 2

Thornburgh v. Gingles, 478 U.S. 30 (1986) 6

REASONS FOR DENYING THE WRIT

The question presented by Petitioners is whether in a Voting Rights Act case, the plaintiff or the defendant is permitted to define the geopolitical area under analysis. The answer, of course, is that the court will define the area. In this case, the District Court, after hearing arguments from both sides, decided that the relevant geopolitical area was the six rural counties outside the urban county of Shelby. The court rejected the Petitioner's argument that the Court had to include Shelby County and its urban population. That decision was affirmed by the Sixth Circuit Court of Appeals.

The real issue in this case is whether the state can justify discrimination against a minority population in one part of the state by over-representing a similar minority group in another part of the state. The District Court and the Court of Appeals determined that the state cannot use over-representation in one part of the state to justify blatant discrimination in another part of the state.

Furthermore, given the timing of the case, it is unlikely that further rulings in this case will have any effect. The 2000 Decennial Census has been completed and the results of that enumeration will be published in the spring of 2001. After the results are known, the Tennessee General Assembly will begin the process of drawing new legislative district lines, based on the new population numbers. Thus, the plan of redistricting which is the subject of this case and which will be in effect for the 2000 election, will never be used again.

Rather, a new plan based on the 2000 census numbers will be in effect for the next election.

STATEMENT OF THE CASE

This case arises from the redistricting which followed the 1990 Decennial Census. As has been the case with every redistricting since 1911,[1] the plan was challenged in Court. In this case, two sets of plaintiffs filed lawsuits. The Rural West Tennessee plaintiffs, representing minority voters in rural west Tennessee, filed a challenge to both the House and Senate plans adopted by the legislature in 1992. The Langsdon plaintiffs, representing both white and black voters from across the state, filed a challenge only to the House plan.

The Langsdon plaintiffs' challenge to the House plan was resolved on Summary Judgement, with the three judge District Court unanimously finding that the House plan violated the "one person, one vote" standard of the Fourteenth Amendment. *Langsdon v. Millsaps*, 436 F. Supp. 447 (W.D. Tenn. 1993), *aff'd*, 510 U.S. 160 (1994).

The Rural West Tennessee plaintiffs then tried their Senate claim. It should be noted that in Tennessee, there are 33 Senate districts and 99 House districts. Under the 1990 Census, the ideal district size for Senate districts

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[1] Not once between 1900 and 2000 did the General Assembly correctly redistrict itself without judicial intervention. *Baker v. Carr*, 222 F. Supp. 684 (M.D. Tenn. 1963), *Kopald v. Carr*, 343 F. Supp. 51 (M.D. Tenn. 1972), *State ex rel. Lockert v. Crowell*, 631 S.W.2d 702 (1982).

was 147,792 and the ideal size for House districts was 49,264. Thus, the area necessary to make up a Senate district is generally three times larger than that needed for a House district. In the Senate case, the three judge panel found that the Senate plan violated the Voting Rights Act. The State appealed and this court remanded for further consideration in light of *Johnson v. DeGrandy*, 512 U.S. 997 (1994).

In the meantime, the Tennessee General Assembly adopted a new plan of redistricting for the House (Ch. 536, Acts of 1994), in response to the earlier decision of the District Court in the Langsdon case. This new plan was immediately challenged by both sets of plaintiffs through Amended Complaints.

This new plan contained three alternatives, two of which are relevant to the discussion here. One, known as Plan A, provided for no majority-minority districts in the rural area outside Memphis. The second, known as Plan B, created a majority-minority district in the rural counties. The districting in Memphis and Shelby County was the same under both plans, increasing the number of majority-minority districts from eight to nine.

In the Amended Complaint of the Langsdon plaintiffs, a challenge was raised to the new plan based on a violation of the Voting Rights Act in the six county area of rural west Tennessee.[2] At no time have the Langsdon plaintiffs suggested that Shelby County should be included in the analysis, creating a seven county area in

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[2] Fayette, Hardeman, Tipton, Haywood, Madison and Lauderdale counties.

west Tennessee. To the contrary, the Langsdon plaintiffs have asserted and continue to assert that the State has attempted to rationalize its discrimination against minority voters in the rural areas of west Tennessee by over-representing minority voters in Shelby County.

Based on the 1990 Census data, which were used in the trial of this case, Shelby County is the most populous and urbanized county in the state of Tennessee. It includes the largest city in the State: Memphis. The six counties outside Memphis are of a rural nature. While Memphis has a population of over 600,000 and Shelby County has a population of over 800,000, the surrounding counties range in size from 25,000 to 65,000.

There are 17 state house districts in Shelby County and 5 house districts in the surrounding six county rural area. The minority population in Shelby County is 39.68% voting-age population. In the rural areas the minority population is 31.01% voting-age population. Under the 1994 plan for the state house, 52.94% of the house districts in Shelby County are majority-minority districts. In the rural counties, 0% – none – are majority-minority.

This is not a case about maximization of minority representation. It is a case about an old fashioned racial gerrymander. The fact is that the state deliberately chose to fragment minority communities in the rural area in order to preserve white incumbents and deny the minority community representation.

ARGUMENT

I. This case will be moot after November 7, 2000

The 2000 elections for the House are set for November 7, 2000. Following the decision of the District Court, as affirmed by the Sixth Circuit Court of Appeals, Plan B is in effect for this election. Petitioners have sought stays from the District Court, the Sixth Circuit and this Court. All requests for a stay have been denied.

The 2000 Census has been completed and the information will be released in early 2001. The redistricting process for the next decade will then begin. The General Assembly could begin drafting new districts as soon as it has the Census information. Thus, the legislative session commencing in January of 2001 could result in a new plan of redistricting. As noted by the Petitioners, "Plan B, in the ordinary course, would not be used after the 2000 elections." Pet. p. 13.

Thus, there is not an actual case or controversy before the court. What Petitioners seek is, in effect, an advisory ruling for the next round of redistricting. This is not an appropriate request for certiorari.

Furthermore, any ruling in this case would be of limited value to the State of Tennessee or any other state, since the ruling is necessarily dependent on the particular population facts of this case. The 2000 census will likely show shifts in population in both the urban and rural portions of west Tennessee. As a result, there may be more or fewer house districts in either region. There may be greater or lesser minority populations in either region.

Thus, it is premature for this Court to rule on the standards to be applied to the post-2000 redistricting, as Petitioners request.

II. The decisions below regarding the relevant geopolitical area are consistent with this Court's previous opinions

Defendants assert that the District Court erred by limiting its analysis to the six rural counties in West Tennessee. They assert, as they did below, that Shelby County should have been included in the analysis. Defendants fail to note that the Langsdon plaintiffs have consistently argued that Shelby County, which is the most urban county in Tennessee, and contains its largest city, Memphis, should be excluded. Defendants contrast the Rural West Tennessee plaintiffs' position in their original Complaint challenging the 1992 redistricting and the position taken by the Rural West Tennessee plaintiffs in their Second Amended Complaint challenging the 1994 redistricting.

Defendants claim to be fearful that the decision of the lower courts would permit plaintiffs to select the area in which to bring any §2 challenge. This fear is misplaced. Any plaintiff is restricted to bringing an action where the injury occurred. The scope of the injury defines the scope of the relevant geopolitical inquiry. The first two *Gingles* preconditions define the scope of the injury: geographical compactness and political cohesion. *Thornburgh v. Gingles*, 478 U.S. 30 (1986). Absent these factors, no plaintiff can prevail. These factors alone dictate the appropriate geopolitical area to be considered. In Tennessee, this is the

area of rural west Tennessee, where a geographically compact and politically cohesive minority community exists. The principles of compactness and cohesiveness are negated by the inculsion of Shelby County, which is an urban county. As noted by the Court of Appeals:

> "While Shelby County is the southernmost and westernmost county in the State and, like the six neighboring counties of rural west Tennessee, has a large African-American population, the seven counties do not form a coherent demographic unit. The African-American population in Shelby County is concentrated in inner-city Memphis, and is largely set off from rural west Tennessee by a buffer zone of white suburbs. As a result, the African-American populations in these two areas are not likely to be particularly cohesive."

Pet. 19a.

Petitioners' argument that this approach leads to maximization turns logic on its head. It is Petitioners, not Respondents, who have attempted to manipulate the area under judicial scrutiny. The District Court noted that it is the Petitioners who are attempting to shift the area under analysis so as to include a county in which minority populations are the majority in a number of districts greatly in excess of their proportion of the population in that county:

> . . . when Defendants attempt to add another county to plaintiffs' challenged region, as in the instant case, over-proportionality in the added county may again conceal dilution in the plaintiffs' challenged region.

Pet. 40a.

This is precisely the danger this Court warned of in *Shaw v. Hunt*, 517 U.S. 899 (1996) and *DeGrandy*. As the Court of Appeals noted, quoting *Johnson v. DeGrandy*, "the rights of some minority votes under §2 may be traded off against the rights of other members of the same minority class." Thus, the decisions of the lower courts reflect a correct application of the principles set forth by this Court in its earlier opinions. Judge Jones in his concurring opinion, was even more emphatic. He found that the Petitioners' position " . . . is contrary to the Supreme Court's interpretation of §2, which clearly provides that a state *may not* remedy vote dilution in one area by legal compliance in another." Pet. 27a (emphasis in original).

It is not the decisions below, but rather, the Petitioners' position which takes the law in directions not contemplated by previous decisions of this Court.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

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